1982

State of Utah v. Charles L. Crick : Brief of Respondent

Utah Supreme Court

Stephen R. McCaughey; Attorney for Appellant;
Attorney General of Utah; Attorney for Respondent;

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,	:	
Plaintiff-Respondent,	:	
-v-	:	Case No. 18080
CHARLES L. CRICK,	:	
Defendant-Appellant.	:	

BRIEF OF RESPONDENT

Appeal from a judgment of second-degree murder, a first-degree felony, in the Third Judicial District Court in and for Salt Lake County, the Honorable Peter F. Leary presiding.

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TABLE OF CONTENTS

Cases Cited

Statutes Cited

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STATEMENT OF THE NATURE OF THE CASE

The appellant, Charles L. Crick, was charged with second-degree murder, a first-degree felony, in violation of Utah Code Ann., § 76-5-203 (1973), as amended, and was tried before a jury in the Third Judicial District Court in and for Salt Lake County, the Honorable Peter F. Leary presiding.

DISPOSITION IN THE LOWER COURT

The jury found appellant guilty of second-degree murder, and the trial court sentenced him to an indeterminate term in the Utah State Prison of not less than five years, and which may be for life.

RELIEF SOUGHT ON APPEAL

Respondent seeks affirmance of appellant's conviction and sentence.

STATEMENT OF THE FACTS

Samuel Beare was murdered on March 15, 1981, at approximately 2:00 a.m. (T. 3, 241). On March 13, 1981, following marital disagreements, the victim moved into an apartment occupied by appellant and Mary Holloway (T. 239). The apartment is located at 269 Kelsey Avenue, Salt Lake City, Utah (T. 72). In this interim period disagreements erupted between the victim, the appellant and Mary Holloway, which were apparently rooted in the treatment the victim had accorded a mutual friend (T. 123, 124).

During the evening of March 14, 1981, Mary Holloway, the appellant, the victim, and Tommy Garcia, an acquaintance of the others, were in the apartment drinking alcoholic beverages (T. 241). The alcohol-induced cordiality of the evening rapidly deteriorated when Garcia and the appellant engaged the victim in heated argument (T. 274, 275, 243). The victim was then viciously attacked by the others. The appellant choked the victim, leaving him almost unconscious (T. 134). With the victim virtually helpless, Mary Holloway grabbed his head and told him to plead for his life, whereupon the appellant smashed glass beer mugs over the victim's head. The appellant then bludgeoned the victim's head with bars of teak wood (T. 156). Following the beating, a knife was produced, and appellant, Holloway and Garcia each took turns stabbing the victim, inflicting fifteen separate wounds, each wound seven to eight inches deep (T. 157, 196, 199).

Following the murder, the victim's body was placed in the back seat of a car; and with appellant at the wheel and Holloway and Garcia as passengers, the body was transported to 1400 East Sunnyside Avenue (T. 3, 158). As Garcia removed the body from the car and placed it by a sidewalk near the road, he was seen by passing motorist Ryan Nielsen, a University of Utah police officer who had finished his night shift at 2:00 a.m. on March 15, 1981 (T. 33, 34, 244, 3, 5). Officer Nielsen then followed the car as it headed westbound on 800 South (T. 5). Apparently malfunctioning, appellant's car stopped at 500 East and 800 South (T. 6). Officer Nielsen approached the car, identified himself and told the occupants to lie on the ground (T. 7). All three complied with the order, but moments later Garcia jumped up and ran from the car (T. 7). Officer Nielsen told appellant and Holloway that they were under arrest and they were to stay on the ground, and he then pursued Garcia, apprehending him minutes later (T. 8). In the meantime, however, appellant and Holloway fled on foot, returning to their apartment (T. 8).

Following further police investigation, Holloway and appellant were both arrested on March 23, 1981 (T. 70).

ARGUMENT

POINT I

THE TRIAL COURT PROPERLY REJECTED APPELLANT'S REQUEST FOR A JURY INSTRUCTION ON MANSLAUGHTER.

Essentially, appellant argues that evidence in the record supports a reasonable view that his conduct lies within the ambit of Utah Code Ann., § 76-5-205 (1973), as amended, the manslaughter statute, and that the lower court's failure to issue the requested manslaughter instruction constitutes reversible error. Scrutiny of the trial record, however, belies appellant's claim.

Utah Code Ann., § 76-1-402(4) (1973), as amended, states:

> The court shall not be obligated to charge the jury with respect to an included offense unless there is a rational basis for a verdict acquitting the defendant of the offense charged and convicting him of the included offense.

In construing Utah Code Ann., § 77-33-6 (1953), as amended, the predecessor to § 76-1-402(4), this Court stated:

> When an appellant makes an issue of a refusal to instruct on included offenses, we will survey the evidence, and the inferences which admit of rational deduction, to determine if there exists reasonable basis upon which a conviction of the lesser offense could rest.

State v. Dougherty, Utah, 550 P.2d 175, 176 (1976). From Dougherty it necessarily follows that if no evidence of an included offense is presented at trial, the defendant is not entitled to a jury instruction covering the included offense. See Boggess v. State, Utah, No. 17983 (decided September 13, 1982); State v. Chesnut, Utah, 621 P.2d 1228 (1980).

In Dougherty, supra, appellant was convicted of unlawful distribution for value of a controlled substance. He appealed his conviction contending that the lower court erred in refusing to give an instruction on the included offense of possession of a controlled substance. In reviewing the trial record, this Court found that the evidence presented at trial either supported appellant's guilt for the greater offense or established his innocence. Affirming appellant's conviction, this Court held that where "the defendant denies any complicity in the crime charged, and thus lays no foundation for any intermediate verdict," he is not entitled to a jury instruction on the included offense. 550 P.2d at 176.

The Kansas Supreme Court, in State v. Burrow, 221 Kan. 754, 561 P.2d 864 (1977), addressed the same issue raised in Dougherty on facts similar to those found in the instant case. There, the two appellants were convicted of second-degree murder. Appellants' convictions were based in part on testimony provided by an accomplice testifying as a prosecution witness in return for a lesser charge. Appellants

testified that the accomplice was the murderer and that they had only attempted to intercede in the victim's behalf. Following conviction, the appellants appealed contending that the trial court erred in refusing to instruct on lesser included offenses of voluntary manslaughter and involuntary manslaughter. The Supreme Court found no evidence in the record justifying appellants' request for the manslaughter instructions. Furthermore, the Court noted that appellants denied any involvement in the murder and in fact testified that the accomplice was the sole cause of the victim's death. Noting the inconsistency between appellants' testimony, in which they attempted to negate participation in any unlawful killing, and their request for manslaughter instructions, the Kansas Supreme Court held that the lower court properly refused to so instruct the jury.

Applying the aforementioned case and statutory authority to the facts of the case at bar, appellant was simply not entitled to his requested manslaughter instruction. The record indicates that Mary Holloway, with appellant present, told another that "We hate Sam" (T. 116). In the same conversation she also said "But it's all right because we are going to kill him anyway" (T. 116). To these responses appellant said nothing, and he offered no protest (T. 117). In addition, the manner of the killing and the events immediately preceding cannot support a claim that the criminal

homicide was manslaughter. Following the murder and the disposal of the body, appellant recounted to two individuals the gruesome murder details (T. 130, et seq., 150, et seq.). Appellant states that he choked the victim almost to the point of unconsciousness, that he hit the victim in the head with glass beer mugs and bars of wood, and that he joined Garcia and Holloway in stabbing the victim to death (T. 134, 156, 157). Furthermore, Dr. Guery Flores, a forensic pathologist, testified that each of the fifteen wounds inflicted on the victim's body would be fatal (T. 199). Finally, the autopsy revealed that the victim was literally swimming in a sea of alcohol and narcotics. His blood contained .19 percent alcohol plus traces of phenobarbitol barbiturate, a sedative, methadone, which causes drowsiness, flurazepam, a sedative used to induce sleep, and diazepam and nordiazepam, both sedatives (T. 202, 203). In this condition, the victim could not possibly have posed a threat to appellant and his two accomplices.

For a criminal homicide to constitute manslaughter, Utah Code Ann., § 76-5-205(1) (1973), as amended, requires that the actor must:

> (a) recklessly [cause] the death of another; or
> (b) [Cause] the death of another under the influence of extreme mental or emotional disturbance for which there is a reasonable explanation or excuse;

> (c) [Cause] the death of another under circumstances where the actor reasonably believes the circumstances provide a moral or legal justification or extenuation for his conduct although the conduct is not legally justifiable or excusable under the existing circumstances.

Viewing the facts outlined above in light of § 76-5-205(1), there is no support for the claim that the criminal homicide was manslaughter.

Finally, appellant's own trial testimony is wholly inconsistent with his request for a manslaughter instruction. Appellant testified that Garcia was the victim's murderer, and he only attempted to stop the fight but was knocked down by Garcia (T. 266). Appellant testified that the unconscious victim was then transported to 1400 East Sunnyside Avenue where the victim was removed from the car and repeatedly stabbed by Garcia while the appellant and Holloway remained in the car (T. 268, 270). Thus, appellant's defense, as evidenced by his testimony, is that he was not involved in any unlawful killing. Therefore, invoking Burrow and Dougherty, supra, appellant was not entitled to a manslaughter instruction.

In sum, appellant has not met the test of Utah Code Ann., § 76-1-402(4) (1973), as amended, because he has failed to articulate facts of record evidencing a rational basis for a verdict acquitting him of second-degree murder and convicting him of manslaughter. Thus, his requested

manslaughter instruction was properly denied by the trial court.

CONCLUSION

Based upon the aforementioned authorities and argument, respondent respectfully requests this Court affirm appellant's conviction and sentence.

Respectfully submitted this 5th day of October, 1982.

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CERTIFICATE OF MAILING

I hereby certify that I mailed two true and exact copies of the foregoing Brief, postage prepaid, to Stephen R. McCaughey, Attorney for Appellant, 72 East 400 South, #330, Salt Lake City, Utah, 84111, this 5th day of October, 1982.

Susan Patton